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ABSTRACT

This handbook describes parent educational rights mandated under federal rules and regulations of the Individuals with Disabilities Education Act, including the amendments of 1997 (IDEA), and the Bureau of Indian Affairs/Office of Indian Education Programs special education eligibility document. Each main topic is preceded by a box that contains a brief summary in clear and understandable language. The following topics are addressed: key special education definitions; free appropriate public education; prior notice to parents; parent consent; independent educational evaluation; educational surrogate parents; student records; mediation; complaint procedures; impartial due process hearing; attorneys' fees; private school placement; and discipline. (DB)

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Special Educational Rights For Parents of Children With Disabilities: Under Provisions of the Individuals with Disabilities Education Act including the Amendments of 1997 (IDEA '97)

By John Copenhaver and Mae Taylor

August 2002

ED 471 214

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BUREAU OF INDIAN AFFAIRS (BIA)
OFFICE OF INDIAN EDUCATION PROGRAMS (OIEP)
CENTER FOR SCHOOL IMPROVEMENT (CSI)

SPECIAL EDUCATIONAL RIGHTS FOR PARENTS OF CHILDREN WITH DISABILITIES

Under Provisions of the Individuals with Disabilities Education Act including the Amendments of 1997 (IDEA '97)

EC309314

August 2002

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Introduction

This handbook describes parent educational rights required under federal rules and regulations, and the BIA/OIEP special education eligibility document. It is important that you, as a parent, understand your rights in special education relating to your child.

These procedural rights are also available for students with disabilities who have reached the age of maturity under state and tribal law and have not been determined to be incompetent by a court.

School staff are available to assist you in understanding these rights and are available on request to provide you with any further explanation. If needed, the school will provide an interpreter or translation to help assure that you understand.

To increase your understanding, before each main topic is a box that contains a brief summary of your rights in clear and understandable language.

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If you have any questions or would like further information please contact:

Name Telephone

Note

Parents whose language is other than English will need to be provided an oral or written translation in their native language.

KEY SPECIAL EDUCATION DEFINITIONS

Parents of a child with a disability need a clear understanding of important terms in special education. Listed below are words that will be used throughout this handbook. Read the definitions to help gain a better understanding of your rights in special education.

1. **Free Appropriate Public Education (FAPE)**— An educational program that meets the unique needs of your child. The program is without charge to the parents and is outlined in the child's Individualized Education Program (IEP).

2. **Evaluation** — A process to determine if your child is eligible or continues to be eligible for special education services. The school will conduct a full and individual initial evaluation before special education and related services are provided to any child. This initial evaluation will consist of procedures to determine:

   a. Whether the child has a disability;

   b. Whether the child requires special education and/or related services;

   c. Educational needs;

   d. The nature and extent of special education and related services needed by the child; and

   e. The least restrictive environment for the child.

3. **Individualized Education Program (IEP)**—The need for special education is documented in each child's Individualized Education Program (IEP). The IEP is the heart of IDEA'97. It is a written statement for each child with a disability that serves as a communication vehicle between a parent and the school. It is the product of collaboration among a parent and educators who, through full and equal participation, identify the unique needs of a child with a disability and plan the special education services to

meet those needs. It contains statements of goals and short-term objectives (hereafter objectives) to monitor and measure the effectiveness of the services. The IEP also serves as a commitment by the school to provide the resources outlined in the IEP.

4. **Least Restrictive Environment (LRE)**—The Individuals with Disabilities Education Act (IDEA) of 1997 states that, to the maximum extent appropriate, children with disabilities, including preschool children with disabilities, are to be educated with children who are not disabled. This concept is known as the least restrictive environment (LRE). The Individualized Education Program (IEP) must contain an explanation of the extent, if any, to which the child will not participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities.

AN EXPLANATION OF PROCEDURAL SAFEGUARDS AVAILABLE TO PARENTS OF CHILDREN WITH DISABILITIES

FREE APPROPRIATE PUBLIC EDUCATION

Brief Summary

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FREE APPROPRIATE PUBLIC EDUCATION

An eligible child with a disability has a right to receive a free appropriate education that is outlined as an Individualized Education Program. The IEP is designed to address your child's unique educational needs.

You have a right to participate in meetings with respect to the identification, evaluation, eligibility, Individualized Education Program planning, placement, and the provision of a free appropriate public education of your child. These are called procedural safeguards or parental rights under IDEA. Your child's general education classroom teacher should also be involved with the development of the IEP. You will be provided with notice to ensure your opportunity to participate.

PRIOR NOTICE TO PARENTS

Brief Summary

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Prior Notice

The school will notify you by phone or letter if they are proposing to change or refuse to change your child's special education program. The notice must be simple and easy to understand. You must also receive notice about meetings about your child in a reasonable time so you can attend.

The school must provide you with written prior notice each time it proposes or refuses to initiate or change the identification, evaluation program, or educational placement of your child or the provision of a free appropriate public education.

The notice must include:

1. A full explanation of all of the procedural safeguards available to you in your native language;

2. A description of the action proposed or refused by the school, an explanation of why the school proposes or refuses to take the action, and a description of any options the school considered and the reasons why those options were rejected;

3. A description of each evaluation procedure, test, record, or report the school uses as a basis for the proposal or refusal;

4. A description of any other factors which are relevant to the school's proposal or refusal; and

5. Sources for you to contact to obtain assistance in understanding the provisions of special education.

If you need assistance in understanding your procedural safeguards or anything else relating to your child's education, please contact the school principal of your local school.

A copy of your procedural safeguards will be available a) upon the initial referral for evaluation b) upon each notification of an IEP meeting or reevaluation of your child, and c) upon a request from the school for an impartial due process hearing.

The notice must be written in language understandable to the general public, and provided in your native language or other mode of communication, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, the school must take steps to ensure that the notice is translated orally or by other means to you in your native language or

other mode of communication so that you understand the content of the notice, and that there is written evidence that these requirements have been met.

PARENT CONSENT

Brief Summary

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PARENT CONSENT

Your written permission is required before your child is first evaluated, reevaluated, and placed in special education programs.

The school must obtain your consent before conducting the first evaluation, initial placement, and reevaluation of your child in a program providing special education and related services. Except for the first evaluation, initial placement and reevaluation, consent may not be required as a condition of any benefit to you or your child. The school may require parental consent for other services and activities.

Consent for the initial evaluation does not mean that consent is given for initial placement. Parental consent is not required before reviewing existing data as part of an evaluation or re-evaluation, or giving a test that is given to all students, for which consent is not required. Informed consent need not be obtained for re-evaluation if the agency can show that it took reasonable measures to obtain consent, and the parent failed to respond.

Written information regarding consent will be in the parents' native language or other mode of communication. You should understand the reason written consent is being asked and understand that your consent can be revoked at any time.

The school may use the BIA/OIEP procedures for due process hearings to determine whether your child may be evaluated or

initially provided special education and related services without your consent, subject to your rights to appeal the decision and to have your child remain in his or her present educational placement during the pendency of any administrative or judicial proceeding.

Independent Educational Evaluation

Brief Summary

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Independent Evaluation

If you disagree with the school's evaluation of your child, you can request an independent evaluation, conducted by someone other than the school staff.

You have the right to an independent educational evaluation at public expense for your child if you disagree with an evaluation obtained by your school. An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the school. The school will provide, upon your request, information about where an independent educational evaluation may be obtained. However, your school may initiate a due process hearing to show that their evaluation is appropriate. If the final decision is that the evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation must be considered by your school in any decision made with respect to the provision of a free appropriate public education to your child, and may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at the school's expense.

Whenever an independent evaluation is at school expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualification of the examiner, must be the same as the criteria, which the school uses when it initiates an evaluation.

EDUCATIONAL SURROGATE PARENTS

Brief Summary

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EDUCATIONAL SURROGATE PARENTS

Some children do not have parents to represent them in educational matters. An educational surrogate parent is someone appointed by the school to represent the child at school meetings.

Each school shall ensure that an individual is assigned to act as an educational surrogate for a child whenever the parents of a child are not known and/or the school cannot, after reasonable efforts, locate the parents; or if the child is a ward of the tribe or state under the laws of the tribe or state. The school must have a method for determining whether a child needs a surrogate parent, and for assigning a surrogate parent to the child.

The person assigned as the educational surrogate parent may not be an employee of the state, BIA/OIEP, or any other agency that is involved in the education or care of the child and has no interest that conflicts with the interest of the child he/she represents.

The surrogate parent may represent the child in all educational matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education.

He/she must have knowledge and skills to ensure adequate representation of the child and may represent the child in all matters relating to the identification, evaluation, educational placement, and the provision of a free and appropriate public education to the child.

Transfer of Parental Rights at Age 18

When a student with a disability reaches the age of majority (age 18), (1) the school shall provide any required notices to both the student and the parents; and (2) all other rights given to parents under IDEA-B transfer to the student; and (3) all rights given to parents under IDEA-B transfer to students who are incarcerated in a state or local correctional institution, for either adult or juveniles. Whenever the BIA/OIEP or school transfers such parental rights, the agency shall notify both the student and the parents of the transfer of rights.

If a student with a disability, age 18 or over, is determined, by the court, incompetent to provide informed consent regarding his/her educational program, the school shall establish procedures for appointing the parent, or if the parent is not available, another appropriate individual, to represent the educational interests of the student, throughout the remainder of his eligibility under IDEA-B. The school will use its surrogate parent procedures to meet this requirement. The parent still retains the right to any required notice, along with the student.

A statement is required on the student's IEP, beginning at least one year before the students 18th birthday, that the student and parents have been informed of their rights under IDEA-B that will transfer to the student on reaching the age of 18. Although the parent retains the right to any required notice, all other parental rights transfer to the student.

STUDENT RECORDS

Brief Summary

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SCHOOL RECORDS

You have the right to see or request copies of your child's school records. If you disagree with items in the records, you can ask if they can be changed or removed.

ACCESS TO RECORDS

Your school must permit you to inspect and review any education records relating to their child with respect to the identification, evaluation, and educational placement of your child, and the provision of a free appropriate public education to your child, which are collected, maintained, or used by the school under special education. The school must comply with the request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, and placement of your child, and in no more than 45 days after the request has been made.

Your right to inspect and review education records under this section includes:

1. The right to a response from the school to reasonable requests for explanations and interpretations of the records;
2. Your right to have your representative inspect and review the records; and
3. Your right to request that the school provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school may presume that you have authority to inspect and review records relating to the child unless the school has been advised that you do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

If any education record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

The school must provide you on request a list of the types and locations of education records collected, maintained, or used by the school.

Fees for Searching, Retrieving, and Copying Records

The school may not charge a fee to search for or to retrieve information under this part, but may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. Copies of the IEP must be provided at no cost to the parents.

Record of Access

The school must keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participant agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Amendment of Records at Parent's Request

If you believe that information in education records collected, maintained, or used under this part is inaccurate, misleading or violates the privacy or other rights of your child, you may request the school that maintains the information to amend the information.

The school must decide whether to amend the information in accordance with your request within a reasonable period to the time

of receipt of the request. If the school decides to refuse to amend the information in accordance with the request, it must inform you of the refusal and of your right to a hearing as set forth below.

The school shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of other privacy or other rights of the child.

If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform you in writing.

If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform you of the right to place in the records it maintains on your child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school. Any explanation placed in your child's records under this section must be maintained by the school as part of the records of the child as long as the record or contested portion is maintained by the school; and if the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

CONFIDENTIALITY

Parental consent must be obtained before personally identifiable information is disclosed to anyone *other* than participating agencies collecting or using the information under IDEA requirements. Parental consent is not required, however, if the records are to be sent to other school officials, including teachers, in the school or agency who have valid educational interest, or to officials of another school or school system in which the student seeks or intends to enroll. Under those circumstances, it is the policy of the BIA/OIEP

schools to forward the education records of students, or when the parents or students requests the records to be forwarded.

The school will protect the confidentiality of student records. The school will designate one person responsible for ensuring the confidentiality and will train all those using the information to protect its confidentiality. A list will be maintained of all those accessing the records.

When a student's special educational records are no longer needed to provide educational services to the student, the school will inform the parents. The information may be given to the parents, or must be destroyed at the request of the parents. However, the school/ BIA/OIEP may maintain a permanent record, without time limitation.

Mediation

Brief Summary

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Mediation

Mediation is an effective way to resolve differences with the school. Mediation is voluntary, free, and conducted by someone not employed by the school.

Parties to disputes involving the identification, evaluation, placement, or provision of a free appropriate public education must be allowed to resolve the dispute through a mediation process that, at a minimum, must be made available whenever a due process hearing is requested.

It is important for you to know that mediation is voluntary, conducted by a qualified/impartial mediator at no cost to you. Mediation cannot delay or deny your right to a due process hearing. The process could result in a written mediation agreement that outlines the resolution to the differences. Discussions during media-

tion are confidential and may not be used as evidence during a due process hearing or civil proceedings.

The BIA/OIEP maintains a list of impartial, qualified mediators, and will pay costs of the mediation process. Each session must be scheduled in a timely way, at a location convenient to both parties. An agreement reached must be set forth in writing.

Discussions during mediation must be confidential, and may not be used as evidence in any subsequent due process hearings or civil actions; parties to the mediation may be required to sign a confidentiality pledge at the beginning of the process.

If parents choose not to use the mediation process, the BIA/OIEP procedures may require parents to meet, at a time and location convenient to parents, with a disinterested party who is under contract with the parent and training information center, who would explain the benefits of mediation and encourage the parents to use the process. The BIA/OIEP may not delay or deny the right to due process if the parent fails to participate in the meeting.

COMPLAINT PROCEDURES

Brief Summary

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COMPLAINT PROCEDURES

If you feel the school is violating special education requirements for your child, you can file a written complaint to the Bureau of Indian Affairs, Office of Indian Education Programs(BIA/OIEP) to resolve the problem.

You have a right to file a signed written complaint with the Bureau of Indian Affairs, Office of Indian Education Programs (BIA/OIEP) if you feel the school has violated a requirement of special education regulations. The complaint must be filed in writing to the BIA/OIEP explaining the alleged violations, and must include a

statement that the school has violated a requirement of BIA/OIEP/ federal special education law, and the facts of the matter. The complaint must allege a violation that occurred within the past 12 months, unless a longer period is indicated because the violation is continuing or compensatory services are requested for a violation within three years.

The BIA/OIEP will have 60 calendar days after the complaint is filed to:

1. Carry out an impartial investigation;

2. Give the parent an opportunity to submit additional information about the allegations, either orally or in writing;

3. Give the school an opportunity to submit additional information about the allegations;

4. Review all the information and make an independent determination of whether a violation has occurred; and

5. Issue a written decision to the school and parent of the findings, conclusions, timelines, and reasons for the final decision.

6. The BIA/OIEP's procedures, above, must permit an extension of the time limit only if exceptional circumstances exist, and include procedures for implementing the complaint decision, including technical assistance activities, negotiations, and corrective actions, if necessary, to achieve compliance.

To file a written complaint, write the: Bureau of Indian Affairs, Office of Indian Education Programs, Center for School Improvement, 500 Gold Av. SW room 7B, PO Box 1088, Albuquerque, NM 87102-1088.

IMPARTIAL DUE PROCESS HEARING

Brief Summary

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IMPARTIAL DUE PROCESS HEARING

On rare occasions, you might disagree with the special education testing, services or placement for your child. Try to resolve your disagreements by requesting mediation, which is a free service. A mediator is a neutral person who tries to resolve differences between you and the school. If no agreement is reached, ask the school how to file for a due process hearing. Please have the school explain the process before you make a final decision.

You or the school may initiate a due process hearing regarding the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education. The school will inform you of the availability of mediation, as described in this booklet.

When requesting a hearing, you or your attorney must provide written notice to the agency, providing the following information:

1. Name and address of your child;

2. Name of school your child is attending;

3. Description of the problem(s), including as many facts as possible; and

4. Proposed resolution to the problem.

The school will have a form available for you to use to file the written notice.

At least five business days before a hearing, each party must disclose to all other parties all evaluations completed by that date and

recommendations based on the evaluations that the party intends to use at the hearing. If not, a hearing officer may bar the information.

The hearing will be conducted by the BIA/OIEP, at a time and place reasonably convenient to the parents and child.

The school must inform you of any free or low-cost legal and other relevant services available in the area if you request the information or you or the school initiate a due process hearing.

The hearing cannot be conducted by an employee of the BIA/OIEP, or of the school involved with the education of your child, or by any person having a personal or professional interest, which would conflict with his or her objectivity in the hearing. (A person who otherwise qualifies to conduct a hearing is not an employee of the school solely because he or she is paid by the school to serve as hearing officer.)

The BIA/OIEP-Education Line Office shall ensure that a final hearing decision is reached and mailed to the parties within 45 days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension at the request of either party.

A hearing officer may grant specific extensions of time beyond the timelines above at the request of either party.

The decision made in a due process hearing is final, unless a party to the hearing appeals the decision in Federal Court.

Civil Action

A judicial action that any party who is aggrieved by the final decision of a due process hearing officer may bring in either Tribal court or federal district court.

Due Process Hearing Rights

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

4. Obtain a written or electronic verbatim record of the hearing; and

5. Obtain written findings of fact and decisions at no cost. (After deleting any personally identifiable information, the agency shall transmit those findings and decisions to the BIA/OIEP Advisory Board for Exceptional Children and make them available to the public.)

You must be given the right to have your child present, and to open the hearing to the public.

Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

CHILD'S STATUS DURING PROCEEDINGS

During the pendency of any administrative or judicial proceeding regarding a complaint, unless you and the agency agree otherwise, your child must remain in his or her present educational placement ("stay put.")

If a hearing involves an application for initial admission to public school, your child, with your consent, must be placed in the public school program until the completion of all the proceedings. If the decision of the hearing officer agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the school and the parents for purposes of the "stay put" procedure described above.

Attorneys' Fees

In any action or proceeding brought under the Individuals with Disabilities Education Act (P.L.105.17), the court may award reasonable attorneys' fees to the parents or guardians of a child or youth with disabilities who is the prevailing party.

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless such a meeting is convened as a result of an administrative proceeding or judicial action.

Attorneys' fees or related costs may not be awarded for services performed after the time of a written offer of settlement to a parent if: (a) the offer is made at any time more than 10 days before the proceeding begins; (b) the offer is not accepted within 10 days; and (c) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorneys' fees may not be awarded relating to any meeting of the IEP team, unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the BIA/OIEP, for a mediation conducted prior to the filing of a request for a due process hearing. An exception is that an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

The court reduces the amount of the attorneys' fees awarded, if the court finds that (a) the parent, during the action, unreasonably delayed the final resolution of the controversy; (b) the amount of fees unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of comparable skill and experience; (c) the time spent and legal services provided were excessive, considering the nature of the action; or (d) the attorney representing the parent did not provide to the school or agency the appropriate information required in the due process complaint, as outlined on page 18.

Previous statements about reduction of attorneys' fees do not apply if the BIA/OIEP or local agency unreasonably extended the final resolution of the action, or there was a violation of procedural safeguards requirements.

PRIVATE SCHOOL PLACEMENT

Brief Summary

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PRIVATE SCHOOL PLACEMENT

Parents who place their child in a private school without the school's endorsement, could be awarded reimbursement for private school educational costs if a court or hearing officer determines that the local school was not providing a free appropriate public education, and the private placement is appropriate to meet the child's needs.

IDEA does not require the school to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility, if that agency made FAPE available to the child and the parents chose to place the child in a private school or facility.

Disagreements between a parent and school regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures, described on page 17.

If the parents of a child with a disability, who previously received special education and related services from the school, enroll their child in a private school without the consent of, or referral from the school, a court or due process hearing officer may require the school to reimburse the parents for the cost of that enrollment if the court or hearing officer finds the school had not made a free appropriate public education available in a timely

manner prior to the private school placement, and that the private placement is appropriate.

A hearing officer or a court may find a parental placement appropriate even if it does not meet BIA/OIEP standards that apply to education provided by the BIA/OIEP, tribal, or grant schools.

The cost of reimbursement described above may be reduced or denied, if: (a) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide free and appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; (b) at least 10 business days (including holidays) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information in (a) of this paragraph; (c) if, prior to the parents' removal of the child from the public school, the school informed the parents, through notice requirements described on page 6 of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or (d) upon a judicial finding of unreasonableness on the part of the parents.

However, the cost of reimbursement may not be reduced or denied for failure to provide the notice described in (b) above if the parent is illiterate and cannot write in English; or complying with the notice requirement would likely result in physical or serious emotional harm to the child; or the school prevented the parent from providing the notice, or the parents had not received notice under the procedural safeguards section of these requirements.

DISCIPLINE

Brief Summary

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DISCIPLINE

Discipline is an important part of learning. The IEP team, including the parent, needs to determine appropriate disciplinary procedures for students with disabilities. Certain protections exist for a student whose behavior is caused by or related to, his/her disability.

Discipline issues relating to students with disabilities are very complicated. For additional information, please contact your school administrator or the IEP team.

1. For a student whose behavior affects his/her learning or the learning of others, the IEP team shall consider and develop, if appropriate, strategies, including positive behavioral interventions and supports to address that behavior.

2. For any violation of school rules, for which any student in the school would be suspended, school officials may order the suspension of a student with disabilities for not more than 10 cumulative school days in a given school year. Additional removal constitute a change in placement, which requires prior notice to the parents and convening of the IEP team.

3. After a student with a disability has been removed for more than 10 cumulative school days in the same year, during any additional removals, the school/agency must provide services to the extent necessary to help the student to appropriately progress in the general curriculum and advance toward achieving the goals set out in his/her IEP, if the removal is as described in #2 above, or the behavior is not a manifestation of the students disability.

4. A change of placement (removal for more than 10 consecutive school days, or a series of removals adding up to more than 10 days, under Federal guidelines) requires prior written notice to the parents, and convening of the IEP team.

5. School staff may order a disciplinary change in placement to an appropriate interim alternative educational setting for the same amount of time that a regular education student would be removed, but for not more than 45 days, if the student carries a weapon to school, or knowingly possesses, uses, sells, or solicits the sale of controlled substances (drugs) at a school or school function. The interim alternative educational setting must be determined by the IEP.

6. Before, or within 10 business days after first removing a student for more than 10 days in a school year, or for weapons violations, drugs violations, or behavior likely to result in injury to the student or to others—if the school did not conduct a functional behavioral assessment and implement a behavioral intervention plan before the behavior, the IEP team shall meet to develop an assessment plan.

7. If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and how it's working, and modify it, as necessary, to address the behavior.

8. As soon as practicable after developing the assessment plan described in #6, above, and completing assessments required by the plan, the school shall convene an IEP meeting to develop appropriate behavioral interventions to address the behavior, and shall implement those interventions.

9. Any additional removals, beyond 10 cumulative school days, requires prior notice to the parents and shall require the IEP team meeting to review the behavioral intervention plan and determine

if modifications are necessary. If at least one of the team members believes that modifications are needed, the team shall meet to modify the plan and its usage, as necessary.

10. A due process hearing officer may order a change in the student's placement to an appropriate interim alternative educational setting for up to 45 days, if the hearing officer, in an expedited due process hearing, finds that leaving the student in his current placement is likely to result in injury to him/herself or others. The hearing officer considers the appropriateness of the student's current placement, considers whether the school made reasonable efforts to reduce the risk of harm in the placement, including supplementary aids and services, and determines that the interim alternative educational setting proposed by school personnel who have consulted with the student's special education teacher will enable the student to continue to progress in the general curriculum, and continue to receive the services and modifications described in the IEP, to meet IEP goals. The setting must also include the services and modifications to address the behavior and designed to prevent the behavior from being repeated.

11. When the school removes or decides to remove the student, under the 45-day rule, the parent must be notified of that decision and provided the procedural safeguards notice, and within 10 days, IEP team must conduct a review of the relationship between the student's disability and the behavior causing the disciplinary action. The team will consider all relevant information, including testing results, information from the parent, observations of the student, and the student's IEP and placement.

12. After considering the above information, the IEP team and other qualified personnel may determine that the behavior was not a manifestation of the student's disability, if they find that (a) the IEP and placement were appropriate, and special education

services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement, (b) the student's disability did not impair the ability of the student to understand the impact and consequences of his behavior; (c) the student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

If the behavior is not found to be a manifestation of his disability, the student may be disciplined in the same manner as students without disabilities, except that a full and appropriate public education will be provided.

13. If the parent disagrees with the determination that the behavior was not a manifestation of the disability, or with any decision regarding placement in discipline procedures, the parent may request a hearing. The BIA/OIEP will arrange for an expedited hearing. If the hearing is to challenge the interim alternative educational setting, the student will remain in the interim alternate educational setting pending the decision of the hearing officer, or the expiration of the 45 days, unless the parent or the BIA/OIEP agree otherwise. The hearing officer shall determine whether the school demonstrated that the child's behavior was not a manifestation of the child's disability.

14. After the interim alternative placement expires, if the school personnel propose to change the child's placement, during the proceeding to challenge the proposed change, the student must remain in the placement *prior* to the interim placement. If, however, school personnel believe it is dangerous to be in the prior placement, the BIA/OIEP may request an expedited due process hearing. The hearing officer will apply the standards described in #10, above, to determine whether the child should be placed in the interim alternate placement, or another appropriate placement.

15. IDEA-B does not prohibit a school from reporting a crime committed by a child with a disability to appropriate authorities. State/tribal law enforcement and judicial authorities may also fulfill their responsibilities if the child with a disability has committed a crime. When a school or agency reports such a crime, they must ensure that copies of the student's special education and disciplinary records of the student are transmitted for the authorities to consider; to the extent allowed by the national Family Educational Rights and Privacy Act.

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